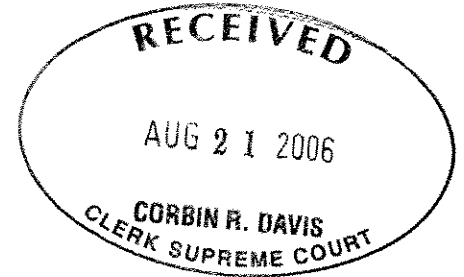


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August 17, 2006



Clerk of the Court
Michigan Supreme Court
PO Box 30052
Lansing, MI 48909

RE: ADM file no. 2005-19

Dear Clerk:

I understand that the Court is considering changing some of the court rules relating to jury trials. After reading the proposed changes, I have the following concerns:

1. Proposed MCR 2.513(I). In appeals I have worked on, there are obvious dangers with permitting jurors to ask questions of witnesses, including the transformation of the jury from a neutral factfinding body to an adversarial one prior to deliberations, implicating the state and federal constitutional right to a fair trial by an impartial jury. In United States v Collins, 226 F3d 457 (6th Cir 2000), the Court held that the dangers of permitting jurors to ask questions include that jurors will remove themselves from their role as neutral factfinders; they may prematurely evaluate evidence and adopt a particular position as to the weight of that evidence before considering the facts; the pace of the trial may be delayed; there is an awkwardness for the lawyers to object to questions by the jurors; and there is a risk of undermining litigation strategies, id at 461. Jurors, unfamiliar with the rules of evidence, may ask improper or prejudicial questions, and when the court declines to ask a question, the juror may feel that his or her understanding of the truth is thwarted. Stating that juror questioning "should be a rare practice", with adequate safeguards such as notice to counsel before trial, instructions to the jury, and screening mechanisms to ensure the ruling on the proposed questions does not occur


before the jury, id at 463.

2. Proposed MCR 2.513(D) and (E). Proposed subrule (D) has the potential for serious problems, and is unnecessary as opening and closing statements currently used are adequate to provide "commentary". Proposed subrule (E) must be preceded by a court rule or other provision authorizing compensation for court appointed defense attorneys to prepare the documents or notebooks. al that judges could sum up evidence would remove judges from a role of neutrality into an adversarial one. The added weight of judicial comments invites the probability of error being introduced at trial. Specifically, witness lists should not be provided because so many witnesses are waived mid-trial, leaving the jurors to wonder what happened (i.e., what the lawyers are "hiding" from them); statutes are redundant because the jury instructions already provide the elements and other appropriate instructions; and written copies of the jury instructions, as well as the exhibits, are provided to the jury during deliberations. These proposals appear to be "fixes" to problems which do not exist.

3. MCR 2.513(K). The overall impact of the proposed revisions appears to permit jurors to begin their deliberations before all the evidence has been presented. This presents an obvious problem for the defense. The distinction between discussing and deciding the case is nonexistent.

Thank you for considering my comments.

Very truly yours,


Joan Ellerbusch Morgan
JEM/jce